

Healthcare & Life Sciences - Austria

Can patients receive refund for alternative medical treatment abroad?

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Introduction

In Austria, trans-border health services in other EU member states are available as either:

- an auxiliary allowance in kind under Article 20(2) of EU Regulation 883/2004; or
- a refund for the cost of treatment in another EU member state under Article 56 of the Treaty on the Functioning of the European Union (within the framework of the free movement of services).

According to Article 20(2) of Regulation 883/2004, an insured is entitled to receive appropriate treatment abroad after receiving approval from the social security institution. Approval will be granted if the treatment is recognised under Austrian law and cannot be provided locally within due course, considering the insured's health. Refunds for the cost of health services under the framework of the free movement of services are available only at the rate at which the social security institution would have paid for local services.

According to Section 133(2) of the General Act on Social Security, foreign treatments are reimbursed only if they are sufficient, useful and necessary.

Facts

The plaintiff claimed a refund from the social security institution for costs incurred from her daughter's herbal treatment using traditional Chinese medicine in London.

Before receiving the treatment in London, the plaintiff's daughter underwent traditional treatment in Austria, which was unsuccessful. The attending physician then recommended a herbal treatment in London, despite the fact that several other scientifically recognised traditional treatments were available in Austria.

Decisions

The court of first instance granted the claim. On appeal, the appellate court dismissed the claim, arguing that because the plaintiff had not sought prior approval of the treatment abroad, the claim could not fall under Article 26(2) of Regulation 883/2004. Further, although refunds can be claimed for treatments that are not yet scientifically recognised (provided that they are useful and necessary), appropriate traditional treatments must be unavailable, unpromising or unsuccessful, whereas the alternative treatment must be successful or expected to be successful.

According to the appellate court, if traditional treatments can be applied (or could have been applied) successfully and without adverse side effects, the social security institution was not obliged to refund the cost of alternative treatments. In this case, a number of scientifically recognised treatments were available and had not been tried. Even though the attending physician had not recommended these traditional treatments, the social security institution was still not required to reimburse the cost of the herbal treatment.

The Supreme Court⁽¹⁾ upheld the appellate court's decision, arguing that Section 133(2) of the General Act on Social Security establishes a primacy for traditional medical treatments. If a disease may be treated successfully with traditional treatments, there is no reason to finance alternative treatments. The court maintained that in order to qualify for a refund, appropriate traditional treatments must be unavailable, unpromising or unsuccessful. Reimbursements are also available where traditional treatments may cause severe adverse side effects, while an alternative treatment may provide the same benefits without any adverse side effects.⁽²⁾

In this case, several promising traditional treatments were available. While some of the traditional

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medicines had no marketing authorisation for children (thus, their administration was considered an off-label use), the court held that the social security institution would still have had to reimburse the cost of these medicines if other traditional treatments were unavailable or unsuccessful and treatment using off-label use medicines succeeded or was expected to succeed. It was not established that these off-label use medicines had been tried or would have led to significant adverse side effects. Further, while it was true that the treating physician had suggested the alternative treatment, the court held that the social security institution was not obliged to pay for the treatment. The court will decide whether a social security institution must reimburse a medical treatment based on expert opinion.

Comment

Austrian social security law is rather restrictive when it comes to refunding the costs of alternative medical treatments. Although the plaintiff was unsuccessful in her claim for reimbursement of her daughter's treatment abroad, the decision clarifies that social security institutions must bear the costs associated with the off-label use of medicines if an acceptable and promising treatment using medicines with marketing authorisation is unavailable or unsuccessful.

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Endnotes

(1) April 23 2014 Supreme Court decision (10 Ob S 26/14t = ARD 6400/18/2014).

(2) 10 ObS 86/09h = SSV-NF 23/81 = DRDA 2011/43, 440 = ZAS 2011/46, 284.

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